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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council Resolution 1996/31.

[15 January 1999]

GE.99-10627 (EXT)

1. At the 1998 session, the Commission on Human Rights adopted no decision on the "Final report on the question of the impunity of perpetrators of human rights violations (economic, social and cultural rights), prepared by Mr. El Hadji Guissé, Special Rapporteur, pursuant to resolution 1996/24 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities" (document E/CN.4/Sub.2/1997/8).

2. The American Association of Jurists (AAJ) is of the view that the Commission must adopt decisions on this extremely important topic at its 1999 session.

3. The AAJ and the Centre Europe-Tiers Monde (CETIM) actively cooperated with the Special Rapporteur in organizing two seminars, one in November 1996 at the United Nations Office in Geneva, and the other in April 1997 at the Universidad Carlos III in Madrid. The latter enjoyed the invaluable assistance of that university's Bartolomé de las Casas and Francisco de Vitoria Institutes. The two NGOs formulated for the Sub-Commission a series of proposals to give effect to the conclusions of the Special Rapporteur (E/CN.4/Sub.2/1997/NGO/16), some of which are reproduced below so that the Commission may take them into account.

4. At the 1999 session the Commission on Human Rights should adopt, among others, the following suggestions and recommendations relating to Mr. Guissé's final report:

a) That control and follow-up mechanisms for the implementation of the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, approved by the ILO Governing Body in 1977, should be reactivated in the ILO;

b) That consultations should be restarted with a view to establishing codes of conduct on the transfer of technology and on multinational enterprises;

c) That a declaration of principles on human rights and the environment should be promoted (see the draft contained in the final report by Ms Ksentini, E/CN.4/Sub.2/1994/9);

d) That the code of conduct for the control of restrictive business practices should be applied and eventually improved;

e) That follow-up mechanisms should be created for the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (General Assembly resolution 51/191) and the International Code of Conduct for Public Officials (General Assembly resolution 51/59); for example, the regular publication of the list of private and public enterprises guilty of corruption;

f) That international judicial co-operation should be promoted (with precedence over bank secrecy, as decided by the Federal Tribunal of the Helvetic Confederation, Case 1A.33/1997 of 8 April 1997);

g) That the establishment of State and investor control of financial activities should be promoted, particularly with regard to the management of pension funds (in the latter case especially with the participation of the trade unions concerned);

h) That studies should continue on appropriate indicators to measure progress achieved with the gradual implantation of economic, social and cultural rights, until such indicators have been established;

i) That the draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights should be approved subject to its relevant amendments;

j) That the Commission on Human Rights should appoint a rapporteur (as proposed by the Committee on Economic, Social and Cultural Rights) or a working group, to deal with violations of economic, social and cultural rights;

k) That a General Assembly declaration should be sought, stating that large-scale violations of economic, social and cultural rights and the abuse of economic power and international financial mechanisms to obtain disproportionate concessions, advantages or profit to the serious detriment of groups or communities (such as women, children, disabled persons, workers, consumers, populations, minorities or indigenous peoples) constitute international crimes (see the General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (adopted under General Assembly resolution 40/34), especially articles 18 and 21 of the Declaration in Section B);

l) That the enforcement of national laws and regulations consistent with existing and proposed international norms in this field be encouraged.

5) With regard to the codes of conduct, there is a fairly developed trend that advocates that multinational enterprises should be given their own codes of conduct, enforcement of which would be monitored by non-governmental organizations. Some companies that have their own codes of conduct even hire private consultants to monitor enforcement. Some non-governmental organizations conduct campaigns and bring direct pressure to bear on particular multinational enterprises to observe labour laws (or ensure that their subcontractors treat their own workers more humanely) or to persuade them to take steps to ensure that their activities do not damage the environment. They even invite them to adopt "codes of conduct" prepared by the enterprises themselves. The "satisfecit" or certificate of good conduct that non-governmental organizations may award, and with even more reason, private consultant firms hired by the companies themselves, cannot replace democratic control by the society as a whole through the national States or by the international community through codes with a hierarchy of obligatory national and international juridical norms. Apart from the risk of deceit, collusion and corruption inherent in "self-monitoring" or private control (the stakes are enormous), there is an objective reason for the failure of such controls: firms try to maximize their profits and to be competitive and, unless forced, will do nothing that is liable to reduce their profits or make them less competitive. As George Soros explains, with the authority acquired by someone who is himself "in the belly of the whale": "If I set rules for myself without imposing them on others, my market profits will dwindle, but it will have no effect on the markets, which cannot be influenced by a single actor. It is one thing to lay down rules. It is quite another to observe them. Laying down rules implies political and collective decisions; observing them implies the individual decisions that prevail in the marketplace". "Capitalism", he goes on to say, "needs the countervailing influence of democracy."